

**From:** Tan/Kal  
**To:** Antitrust  
**Date:** 11/30/01 11:59am  
**Subject:** Favor remedy by full open source code

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November 30, 2001

Dear Sirs,

Regarding the Microsoft settlement proposal, I think that Judge Motz had it right by stating, "I think you've got to go back to square one to get to square five." The judge seems to have said: Get that mutt outta here before I take a bite out of it.

Microsoft has accumulated a \$16B cash kitty by anticompetitive, monopolistic practices, and has shown no remorse. A \$1B donation to schools may sound like a slap on the wrist, but in fact it turns out to be 'self-serving' — potentially undercutting competitors who have chosen the long, slow route to undoing Microsoft's historical monopoly in operating systems by cultivating and educating schoolchildren who won't be ready for credit cards for another ten years.

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If this was such a penalty, why would Red Hat be willing to match Microsoft's largess by a one-for-one donation of its Linux-based operating system to every schoolchild that receives Microsoft Windows™? Furthermore, nothing has changed. Microsoft's new WinXP, by integrating applications such as photo processing into its operating system continues to push other manufacturers out of the digital business. Dog eat dog? No, anticompetitive; the trial is already over and we are awaiting sentencing.

This is the penalty phase. Microsoft is guilty. . But is the Federal Government big enough to take on Microsoft? They don't call it the US Department of Justice (US DOG) for nothing! This is a pit bull, not a poodle, and the only thing Microsoft is going to understand is a bigger dog. Judge Motz is waiting for a solution that provides redress to the injured parties, who are the plaintiffs in the class action lawsuits — the consumers. If not now, not next time.

The only meaningful redress is to open the source code to the public. Granted, the source code is proprietary information. But this penalty phase is exactly about forfeit of corporate private property to the government — that's why they call it a "penalty". OK?

Rather than send ten dollars to every consumer who bought an MS product in 1998, making the code non-proprietary is the only penalty that will meaningfully benefit the consumer and ultimately increase our nation's security. There are strong benefits from open-source computing for the consumer. We no longer need to worry that computing will be left to the geeks who do their own programming. The industry is too big now. Instead, whole new entrepreneurial activities will spring up if the code is made public.

And what better penalty then to give the source code to the real immediate victims here, Microsoft's competitors in the marketplace, when by doing so, the marketplace can quickly multiply the benefits ten-fold for the consumer, benefiting everyone without the expense of millions of letters to every household. The benefits of open-source computing include:

- Reduction in the cost of highly specialized programs, such as for image analysis, voice over data, surveillance and security. As things stand, development of these applications is a difficult, risky and prolonged effort. One key risk is that Microsoft will integrate key features, but then change secret parts of the code so that the innovator's software is no longer compatible. An example is Java.
- Better privacy, improved resistance to hacking and data theft. Simply put, generic hacking has become a high school hobby because we have generic computers. The one-size-fits-all approach to computing has made us all vulnerable.
- Reduction in network vulnerability to viruses and system instability. Obviously, viruses propagate quickly in our society because we all have clones of the same software.
- Better, faster and more energy-efficient hardware operation. This is good old american more bang for the buck.

As another example, look at the broad interest in Back Step™, Go Back™ and Microsoft's latest knock-off of "system restore". What if an operating system and hardware had been designed for this feature rather than it being glued on like a fruitfly onto the skin of an enormous onion. If redesigned from the kernel, it could be integral and automatic, as easy as resetting a digital clock and as reliable as the sunrise. This re-engineering of the operating system is only possible if the source code is open to entrepreneurs who have no stake in the status quo.

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Again, by providing each application with dedicated memory (not a common swap file), system crashes due to memory allocation can be avoided entirely. But instead of focusing on improving the operating system, for the last 6 years Windows instead focussed on winning the Browser Wars — and sold us 6 consecutive beta versions of its operating system that required consumers to continually update numerous applications at great expense and labor.

In fact, Microsoft has also frozen computer hardware architecture in place. Freeing developers to redesign the operating system also frees hardware designers to at last begin the refinement of customized chips specialized for particular functions such as voice recognition or image analysis. Software emulation is the hard way to solve these problems, and points to the greatest single weakness in the current evolution of computing, the failure of custom hardwired chips to evolve and make significant inroads into the market. This hasn't occurred because the systems are not competitive, it has occurred because competition has been squashed. For example, consider Apple Computer. Microsoft decides when Apple will get a new operating system, not Apple.

And what about security? Look at how dependent the Government is becoming on personal computers; the new WinXP gives Microsoft technicians a back door into every computer on the planet. Any kid with his own computer has a roadmap to your computer because yours is exactly the same as his. Any serious hobbyist can buy generic gaming tools that allow them to access your system.

Some have said that it is better not to make the source code public because its weaknesses and access points would be revealed to everyone (particularly Passport). Better to keep it secret so that we are safe, they argue. This is like saying we are safer if we don't know where the terrorists are or what they are doing. There is a public interest in the source code, that of national security, and we can no longer trust a proven anticompetitive organization to have the national interest in its priorities. Chairman of Microsoft is not an elected office.

All encryption systems have limits. A key is necessary. But if proprietary hardware modifications are made, and an open source operating system is modified to work with them, then the system becomes unbreakable without access to the hardware. This is the computer analogy of the Navajo code talkers of WW II. Security is ensured when each individual or government can customize their own applications, stripping out unnecessary parts of the operating system that compromise security or corrupt stability, and adding unique intermediate components or coprocessors to prevent foreign access.

What we need is a simple operating system built around our applications, not generic gooies tacked onto a massive and secret operating system. Only the increase in processor speed and memory size has permitted this folly, but at what a waste of energy and time! 35 Mbytes for an Operating System: Ridiculous! Even 3.5 Mbytes is too much. Data processing must not be forced to conform to one man's view of what a computer, or a society, or an individual, should be. Microsoft's strategy, by choosing the lowest common denominator, has made us all exceptionally vulnerable to social instability in our communications, at home and abroad, and has shackled our entrepreneurial spirit by its domination. Ultimately, with open source, the next line OS will be reduced to common kernel for most mass market applications, and plug-in modules (hardware combined with software) for applications: one for security, one for word processing, one for telephony, etc. that are recognized by a user profile (and coprocessors) and interrelate through dedicated static and dynamic memory arrays to analog devices and common peripherals in a common or proprietary language, user's choice.

Microsoft has put the survival of its massive, primitive, convoluted, proprietary operating system above all of society's other interests or needs. Microsoft was convicted in a court of law, and it is up to the Court to decide what will be confiscated from Microsoft as compensation to the victims. Relief by open source code will bring an era of competitive innovation at a pace that will astonish the consumer, trimming away the quirks and the self-serving features in the Microsoft operating systems like the barber's razor on a neutered poodle.

The current 'trial balloon' settlement offer is unfair and unbalanced. We should beseech Judge Motz to reject it. I call upon the Antitrust Division to return to the bargaining table with a new vigor and urgency, demanding publication of the Microsoft source code for its operating systems.

Sure, that will bring a fight, but the trial is already over. They lost. Not only is publication of the source code in the public interest, it is also a matter of public security; a clear case of 'eminent domain'. No corporation, no man, can be allowed to hold this country's access to e-information and e-commerce in a lock box, with the sole power to dole out "improved versions" the same way AT&T once upon a time developed new telephone products, by planned obsolescence.

Sincerely,

MTC-00032130\_0003



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